

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JAN 13 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0073
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
SELENA ALICIA CORONADO,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR20012121 and CR20013319

Honorable Howard Hantman, Judge

AFFIRMED

Tom Horne, Arizona Attorney General
By Kent E. Cattani and David A. Sullivan

Tucson
Attorneys for Appellee

Harriette P. Levitt

Tucson
Attorney for Appellant

ECKERSTROM, Judge.

¶1 In this appeal from the sentences imposed at a resentencing granted by the trial court in a proceeding pursuant to Rule 32, Ariz. R. Crim. P., appellant Selena Coronado maintains the court erred in imposing aggravated prison terms without a jury trial on all of the aggravating circumstances the court found existed. Finding no error, we affirm.

Background

¶2 After a jury trial, Coronado was convicted in CR20012121 of attempted second-degree murder and two counts of aggravated assault, arising from a 2001 stabbing. Shortly after that stabbing, Coronado and two men beat and stabbed a man in a hotel room before stealing his wallet and vehicle. Coronado was charged in CR20013319 with various offenses and a jury found her guilty of aggravated assault, armed robbery, and aggravated robbery.

¶3 The trial court sentenced Coronado in both causes at the same proceeding, imposing aggravated prison terms on all counts and, ordering Coronado to serve the terms imposed in each cause concurrently with the other terms in that cause. And, the court ordered the prison terms in CR20013319 to be served consecutively to the terms in CR20012121. In its minute entry, a copy of which was entered in each cause, the court stated that it had imposed aggravated terms based on the following aggravating circumstances: “severe emotional harm to the victims,” Coronado’s “prior felony convictions,” and “the threat [Coronado] pose[d] to the community.”

¶4 Coronado appealed in both causes; her appeals were consolidated and this court affirmed the convictions and sentences. *State v. Coronado*, Nos. 2 CA-CR 2002-

0404, 2 CA-CR 2002-0405 (consolidated) (memorandum decision filed Apr. 29, 2004). She then sought post-conviction relief pursuant to Rule 32. The trial court denied those petitions and this court denied relief on review, *State v. Coronado*, No. 2 CA-CR 2006-0184-PR (memorandum decision filed Jan. 30, 2007). Coronado filed subsequent notices of post-conviction relief in both causes, but when filing her petitions, she also filed a separate motion to correct the trial court's sentencing minute entry pursuant to Rule 24.4, Ariz. R. Crim. P.

¶5 In her motion Coronado noted that although the minute entry had listed her “prior felony convictions” as an aggravating circumstance, the trial court had not cited that factor at the sentencing hearing, but instead had included only Coronado's “prior violent, escalating, behavior,” “the threat she poses to the community given her violent prior past,” and “the severe emotional harm to the victims.” The trial court granted the motion as well as Coronado's petitions for post-conviction relief, in which she argued, *inter alia*, that because the trial court had not found “the existence of prior felony convictions,” she was entitled to have a jury determine the existence of the remaining aggravating circumstances.

¶6 The trial court held a bench trial on Coronado's prior felony convictions and concluded that the state had proven the existence of one of Coronado's prior convictions beyond a reasonable doubt. It resentenced Coronado to the same aggravated terms it had originally imposed, which totaled forty-two years' imprisonment. This appeal followed.

Discussion

¶7 In the sole issue raised on appeal from that resentencing, Coronado contends the trial court violated “her constitutional rights to due process and to trial by jury as guaranteed by *Blakely* [*v. Washington*, 542 U.S. 296 (2004)].” Relying on *State v. Nordstrom*, 206 Ariz. 242, 77 P.3d 40 (2003) (*Nordstrom II*), and *Nordstrom v. Cruikshank*, 213 Ariz. 434, 142 P.3d 1247 (App. 2006) (*Nordstrom III*), she maintains that because the court did not rely on her prior convictions to aggravate her sentence at her original sentencing, she was entitled to a jury trial on all aggravating factors upon resentencing. We review sentencing issues involving statutory interpretation and constitutional law de novo. *State v. Urquidez*, 213 Ariz. 50, ¶ 11, 138 P.3d 1177, 1180 (App. 2006).

¶8 Coronado’s reliance on the *Nordstrom* cases is misplaced. In those cases, our supreme court and this court addressed a capital defendant’s right to jury findings on sentencing factors under *Ring v. Arizona*, 536 U.S. 584 (2002), and former A.R.S. §§ 13-703 and 13-703.01.¹ Our supreme court ruled that *Ring* entitled Nordstrom to a jury determination as to whether the mitigating circumstances presented were sufficient to “call for leniency” under former § 13-703(E). *Nordstrom II*, 206 Ariz. 242, ¶ 27, 77 P.3d at 46, *quoting* former § 13-703(E). After remand, Nordstrom sought special action relief in this court. Accepting jurisdiction and granting relief, we concluded that although

¹As part of the reorganization of Arizona’s sentencing statutes, former § 13-703 was renumbered as A.R.S. § 13-751 and § 13-703.01 was renumbered as A.R.S. § 13-752. 2008 Ariz. Sess. Laws ch. 301, § 26. No substantive changes were made to either section as part of that renumbering. *See* 2008 Ariz. Sess. Laws, ch. 301, § 119.

the constitutional protections set forth in *Ring* did not require a jury finding on all of the aggravating factors alleged against Nordstrom, former §§ 13-703 and 13-703.01 did. *Nordstrom III*, 213 Ariz. 434, ¶ 17, 142 P.3d at 1253. Coronado argues the situation here is “analogous” to Nordstrom’s and she is likewise “entitled to a jury trial on all alleged aggravating factors.”

¶9 Unlike Nordstrom, however, Coronado was sentenced under the noncapital sentencing scheme set forth in former A.R.S. §§ 13-604 and 13-702 rather than the capital scheme.² Former § 13-702(C) set forth the sentencing procedures for noncapital defendants and specified that “the court shall determine an aggravating circumstance” relating to a defendant’s having been “convicted of a felony within the ten years immediately preceding the date of the offense.” 2008 Ariz. Sess. Laws ch. 301, § 24. In the capital context discussed in *Nordstrom*, however, neither former § 13-703 nor former § 13-703.01 permitted the court to make a finding as to the existence of prior convictions without a waiver by the defendant of the right to have a jury make the finding. *See* 2008 Ariz. Sess. Laws ch. 301, §§ 26, 38-39. Thus, as we concluded in *Nordstrom*, the legislature provided that a capital defendant is entitled to a jury trial on all aggravating circumstances, including prior convictions. But, it has made no such provision for a noncapital defendant.

²As part of the reorganization of Arizona’s sentencing statutes, former § 13-604 was repealed and its provisions were relocated, 2008 Ariz. Sess. Laws, ch. 301, §§ 15, 119, and the parts of § 13-702 relevant to this appeal were added to A.R.S. § 13-701. 2008 Ariz. Sess. Laws, ch. 301, §§ 23-24. Again, no substantive changes relevant to this appeal were made as part of the renumbering. *See* 2008 Ariz. Sess. Laws, ch. 301, § 119.

¶10 Likewise, a noncapital defendant is not entitled to be resentenced on remand “as if the original sentencing had not occurred,” as is a capital defendant. 2008 Ariz. Sess. Laws ch. 301, §§ 26, 39; *see also* § 13-752(N). In sum, the trial court did not err by determining after a bench trial that the state had proven the existence of Coronado’s prior conviction; nor did it err in sentencing her to an aggravated term on that basis. *See State v. Price*, 217 Ariz. 182, ¶ 10, 171 P.3d 1223, 1226 (2007) (“aggravating factor can constitutionally increase a maximum sentence” when “either the judge or the jury . . . find[s] ‘the fact of a prior conviction’”), *quoting Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *see also* § 13-701(D)(11).

Disposition

¶11 Coronado’s convictions and sentences are affirmed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge